(1954) 01 BOM CK 0019

Bombay High Court

Case No: Civil Revision Application No''s. 1380, 1436-1463 and 1629 of 1952 and 194 of 1953

Karamsey Kanji		APPELLANT
	Vs	
Velji Virji		RESPONDENT

Date of Decision: Jan. 22, 1954

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 11, 18

Citation: (1954) 56 BOMLR 619

Hon'ble Judges: M.C. Chagla, C.J

Bench: Single Bench

Judgement

M.C. Chagla, C.J.

A very interesting and important question arises on this revision application, and I have received considerable assistance from the able arguments both of Mr. Kapadia and of Mr. Sakhardande. The facts briefly are that the landlord constructed a building in December 1946 and he let out a room on the 2nd floor of that building immediately thereafter at a rent of Rs. 28. In March 1949 the tenant applied to the learned Civil Judge at Thana for fixation of standard rent. The learned Judge dismissed that application holding that Us. 28 was the proper rent. There was an appeal to the District Court, and the learned District Judge on April 17, 1951, held that the standard rent was Rs. 23-12-0. The landlord then filed a suit in the Small Causes Court for arrears of rent against the tenant and the arrears claimed were from January 1, 1951, to December 81, 1951. The landlord''s .contention was that he was entitled to the contractual rent of Rs. 28 for the months of January, February and March 1951 and that it was only from the date of the fixation of the standard rent, viz. April 17, 1951, that the tenant was entitled to the reduction of rent. The trial Court held in favour of the landlord, but the appellate Court came to the conclusion that the order of fixation of the standard rent was retrospective in character and therefore the landlord was not entitled to recover rent in excess of

the standard rent fixed even for the period December 1950 to March 1951, and the question that has been raised in this application is as to what is the effect of the fixation of standard rent in the case of premises which were let after September 1, 1940.

2. Turning to the statute, "standard rent" is defined in Section 5(10)(b). The basic date fixed by that sub-section is September 1, 1940, and if the premises were let on September 1, 1940, then the standard rent is the rent at which they were so let; if they were not let on September 1, 1940, then the standard rent is at which they were last let before that date; and then we come to Clause (iii) where they were first let after September 1, 1940, the rent at which they were first let; and the contention is that inasmuch as these premises were first let in December 1946, they fell within this sub-section and the standard rent of these premises was Rs. 28 at which they were let. Now, there is Clause (iv) to Section 5(10)(b) which provides, "in any of the cases specified in Section 11, the rent fixed by the Court"; and when we turn to p. 11 it provides;

(1) In any of the following cases the Court may, upon an application made to it for that purpose, or in any suit or proceeding, fix the standard rent at such amount as, having regard to the provisions of this Act and the circumstances of the case, the Court deems just-

(a) where any premises are first let after the first day of September 1940, and the rent at which they are so let is in the opinion of the Court excessive or....

Therefore, it is clear that there is no finality about the standard rent in respect of premises which are let after September 1, 1940. It is open to the Court not to accept the rent at which they were let for the first time after September 1, 1940, -if in the opinion of the Court that rent was excessive. Therefore, it may be said that in a sense the standard rent of premises first let after September 1, 1940, is a sort of ad interim standard rent, a standard rent capable of being modified if the Court is satisfied that that rent is excessive.

3. Now, what is urged by Mr. Kapadia on behalf of the landlord is that every order of the Court must be prospective and not retrospective, and it is therefore urged that till the Court on April 17, 1951, determined the standard rent to be Rs. 23-12-0, or, in other words, till the Court came to the conclusion that the rent of Rs. 28 was excessive and should be reduced, the standard rent continued to be the rent at which the premises were first let, and the effect of the order of the Court could only be that from the date of the order the standard rent was Rs. 23-12-0. It is further urged that the order of the Court of April 17, 1951, could not possibly alter the standard rent which under the provisions of the law the landlord was entitled to recover and in recovering which he was not contravening any provision of the Act. Now, Section 7 of the Act provides that except where the rent is liable to periodical increment by virtue of an agreement entered into before September 1, 1940, it shall

not be lawful to claim or receive on account of rent for any premises any increase above the standard rent, unless the landlord was entitled to recover such increase under the provisions of this Act. It is, therefore, argued that if the standard rent of the premises was from the date of the tenancy the rent fixed by the Court on April 17, 1951, the result would be that it was not lawful for the landlord to recover a rent in excess of that rent, and it is pointed out that such an interpretation would be patently untenable. Attention is then drawn to Section 18 which penalises a landlord who receives any fine, premium or other like sum or deposit or any consideration, other than the standard rent, and therefore it is pointed out with some force that if retrospective effect were to be given to the order of April 17, 1951, the act of the landlord in receiving the rent, which was a perfectly proper act in view of the definition of "standard rent" given in Section 5(10)(b)(iii), would be rendered an unlawful act and the landlord would become liable to be penalised. It is further pointed out that u/s 13(1)(j) if a tenant sub-lets the premises before the coming into operation of this Act and charges rent in excess of the standard rent, then he would be liable to be evicted, and therefore it is said that if the tenant charged his subtenant the same rent as he was paying to the landlord and which was the standard rent within the meaning of Section 5 (10)(b)(iii) and if the Court were subsequently to hold that that rent was excessive and reduced the original rent, the tenant would be liable to be evicted because it could be said by his landlord that he had charged his sub-tenant a rent which was in excess of the standard rent. According to Mr. Kapadia all these considerations clearly indicate that the Legislature did not intend the fixing of the standard rent u/s 11(1)(a) to be retrospective but prospective.

4. Reliance is also placed on a judgment of the English Court in Clift v. Taylor [1948] 2 K.B. 394 Lord Justice Scot in construing the English Rent Act pointed out:

...the Act interferes with freedom of contract and thus modifies an important right of the individual. Any real ambiguity of language in any particular provision, still apparent even when construed in the light of the whole Act, ought to be resolved in favour of maintaining common law rights.

With respect, it is perfectly correct that a Court must lean in favour of maintaining the sanctity of contracts. But it is equally true that in construing any statute the Court must keep in mind the object which the Legislature had in placing a particular piece of legislation on the statute book, and this is even more so where the Court is dealing with a piece of social legislation. Even the learned Chief Justice in the observation on which reliance is placed says that there must be an ambiguity which is apparent after the provision is construed in the light of the whole Act, and Mr. Kapadia may be right that if after I have looked at all the provisions of the Act and borne in mind the object of the Legislature an ambiguity remains, the ambiguity should not be resolved to defeat the sanctity of contracts but to maintain that sanctity. But as I shall presently point out, in my opinion there does not seem to be

any such ambiguity which would induce me to give the benefit of it to the landlord.

5. Now, it is clear that the Act was passed to control rents so that in days of scarcity of houses the landlord should not exact unconscionable rents from the tenant. The Act was also passed in order to give protection to the tenant from being evicted, and it is in the light of these two main objects that the different provisions of the Act should be construed. I do not see any difficulty about giving effect to Section 7. So long as there is no determination by the Court u/s 11(1)(a) the landlord is perfectly justified in recovering from the tenant, or claiming from the tenant the contractual rent, the rent at which the premises were first let after September 1, 1940. Neither his recovery nor his claim is in any sense of the term unlawful. It is only when the standard rent has been altered that the recovery or the claim becomes unlawful. But this recovery from the tenant of rent which was the rent specified in Section 5(10)(b)(iii) is subject to the important right of the tenant given to him u/s 20, and that section provides :

Any amount paid on account of rent after the date of the coming into operation of this Act shall, except in so far as payment thereof is in accordance with the provisions of this Act, be recoverable by the tenant from the landlord to whom it was paid or on whose behalf it was received or from his legal representative at any time within a period of six months from the date of payment and may, without prejudice to any other remedy for recovery, be deducted by such tenant from any rent payable by him to such landlord.

Therefore, Section 20 gives the right to the tenant to recover any amount which he has paid to his landlord which is not in accordance with the Act. That right is not an unlimited right, but it is a right which must be exercised within six months from the date of payment. Once the Court comes to the conclusion that the rent which had been recovered by the landlord and which had been paid by the tenant was not the real standard rent but was in excess, and the Court determines what is the real standard rent u/s 11(1), then, although to the extent that the landlord had recovered the higher rent his act may not be unlawful, still Section 20 gives the right to the tenant to recover whatever he had paid to the landlord in excess within the period of limitation.

6. I see no injustice to the landlord in putting this construction upon the relevant provisions of the Act. A different interpretation put on the other hand would make the position of the tenant intolerable. If Mr. Kapadia''s contention is right, it would mean that a landlord would be entitled to recover the contractual rent up to the very date when the Court decides u/s 11(1)(a) that the contractual rent is not the standard rent. In this very case the tenant made the application in March 1949 for the fixation of the standard rent, and the standard rent, not through any fault of the tenant but through the exigencies of judicial procedure, was not fixed till April 17, 1951, and according to Mr. Kapadia the landlord was. entitled to recover and the tenant was bound to pay rent right up to April 1951, Therefore, at whatever point of

time the tenant may realise that he is paying rent which is in excess of the standard rent and may want to be relieved from payment of that excess, he would be completely helpless till the Court in its own good time decides what the standard rent is. It may be that if the tenant is so foolish as to go on paying the higher rent even after he had made the application, he may have no right except the right given to him u/s 20. But when the landlord comes to Court and wants the machinery of the Court to be used in compelling the tenant to pay arrears of rent, the Court is not bound to assist the landlord in recovering rent which has been held to be excessive and unfair. This is exactly what the landlord is doing in this case. To the extent of the rent from January 1951 to March 1951 the landlord asks the Court to pass a decree for rent in an amount which a competent Court has held to be an excessive amount and unfair to the tenant. In my opinion, in one sense the view I am taking is not to make the order of April 17, 1951, retrospective, because when the Court is asked to pass a decree for rent that order has already been passed and there is an adjudication that the rent charged by the landlord was excessive rent. In one sense it was always excessive; that is what the Court has determined; but the rights of the tenant to be relieved against that excessive rent are limited and those rights are the right to refund u/s 20 and the right of the Court not to pass a decree if the landlord comes to Court and wishes to recover from the tenant rent which is in excess of the standard rent fixed by the Court.

7. It has also been pointed out to me by Mr. Sakhardande that it is possible to take the view that u/s 18 what is made penal is receiving a fine, premium or other like sum or deposit or any consideration other than the standard rent or the permitted increases, and according to him this expression does not include "excess rent". There is considerable force in this argument, because it seems to be clear that "other like sum" must be ejusdem generis with fine or premium, and with regard to consideration the latter part of the section makes it clear that the consideration contemplated is not a pecuniary consideration but consideration other than pecuniary, and that is why the latter part of the section provides that the line which may be imposed shall not be less than the amount of the fine, premium or sum or deposit or the value of the consideration received by the landlord. It is also pointed out that the question of excess rent recovered by the landlord is only dealt with u/s 20 and the only liability upon the landlord who has charged excessive rent is to refund it within the period of limitation. There is also force in the contention that if Section 18 also dealt with excess rent, then it was unnecessary to enact Section 20 because Section 18(2) provides for refund of fine, premium or other like sum or deposit or any consideration.

8. With regard to the difficulty suggested by Mr. Kapadia in respect of the provision contained in Section 13(1)(j), I do not think on a careful consideration of that sub-section that it really presents any difficulty. The mischief which is aimed at in Clause (j) is that the tenant should not make profit out of sub-letting the premises let to him, and therefore that clause provides that if he charges a rent which is in

excess of the standard rent, then he is liable to be evicted. Now, if the landlord is charging rent which is the standard rent as defined in Section 5(10)(b)(iii) and before it is adjudicated upon and held to be excessive, it could not be said, if the tenant is charging the same rent from the sub-tenant, that he is charging a rent in excess of the standard rent. What the landlord has charged u/s 5(10)(b)(iii) does not cease to be standard rent by reason of a subsequent determination by the Court that it was excessive. The only liability that is imposed upon the landlord is the liability to refund u/s 20 within the period of limitation. In my opinion this is the only way that the different sections of the Rent Act can be reconciled.

9. Reference may be made to a rather instructive decision of the Privy Council. That is the decision in Karnani Industrial Bank v. Satya Niranjan Shaw (1928) L.R. 55 IndAp 344. In that case the lease was granted on October 1, 1920, the rent reserved being a quarterly rent of Rs. 5,400 and the tenant applied to fix the standard rent on December 1, 1923, and the Controller fixed the standard rent at Rs. 1420 on March 11, 1944. The tenant had paid rent up to August 1, 1922, and the question was, what was his liability for rent subsequent to that period, and the Privy Council held that his liability was to pay the rent as fixed by the Controller although it was fixed on March 11, 1944. Mr. Kapadia is perfectly right when he distinguishes this case by pointing out that under the Calcutta Rent Act of 1920 there was no provision similar to Section 3(10)(b)(iv) and that the Controller had no right to reduce the rent on the ground that it was excessive. Therefore, the landlord was at all times charging rent which was not the standard rent according to the definition in the Act, and therefore according to Mr. Kapadia the decision of the Privy Council cannot help us to construe the provisions of the Bombay Rent Act where there are two different definitions of "standard rent" and the landlord is charging rent which admittedly falls in one of the two definitions. Mr. Kapadia says the position would be certainly different if the landlord charges a rent which does not fall in any of the definitions of "standard rent". But although the facts are undoubtedly different, there are certain observations of the Privy Council which may be usefully looked at. The Privy Council points out at p. 348:
Moreover by Section 4, rent in excess of the standard rent is irrecoverable by the landlord. This must mean irrecoverable at any time by any process.

To the argument that the Controller had no power to fix the standard rent so as to operate retrospectively, their Lordships'' answer was (p. 85) :

...their Lordships cannot accept this contention, as one of the objects of fixing the standard rent must be to enable a tenant to know whether he has in fact paid or agreed to pay rent in excess of the standard rent.

Here, too, the object of enacting Section 5(10)(b)(iv) is to enable the tenant to know whether he has in fact paid or agreed to pay rent which is in excess of the standard rent, and in my opinion it would be defeating the very object of the Act if after the

determination of the standard rent has been made and a landlord sues to recover rent which is in excess of what is determined to be the standard rent the Court were to pass a decree in favour of the landlord.

10. Therefore, in my opinion, the appellate Court of the Small Causes Court was right when it took the view that the landlord could not recover by a suit rent for the period January 1, 1931, to March 81, 1951, which was in excess of the standard rent fixed, viz. Rs. 23-12-0.

11. There is one other contention which also arises and which is also a contention of some importance. The tenant''s contention is that u/s 20 although he could not recover from his landlord rent which he has paid in excess beyond the period of six months from the date of the payment, as far as deduction of rent is concerned no period of limitation is provided by Section 20. The language relied upon is that "any amount paid on account of rent after the date of the coming into operation of this Act, may without prejudice to any other remedy for recovery be deducted by such tenant from any rent payable by him to such landlord"; and what is emphasised is the expression "any rent payable by him to such landlord", and it is suggested that the Legislature permitted the tenant without any question of limitation to deduct from the rent payable by him to the landlord any amount which he had paid in excess in the past irrespective of the point of time when he had made this excessive payment. For this purpose my attention has been drawn to the legislative history of this particular provision. In Section 12 of Bombay Act II of 1918 there was a specific provision with regard to limitation both with regard to the right of recovery by the tenant and also his right to deduct from rent payable in future, and the provision was, "and may without prejudice to any other method of recovery be deducted by such tenant from any rent payable within such six months by him to such landlord." There was a similar provision in Section 14(1) of the Act of 1939 and also in Section 12(1) of the Act of 1944, and therefore what is urged with some force is that the Legislature advisedly changed its policy when it passed the present Act and gave the right to the tenant to deduct from the rents payable by him any excess paid by him in the past without any question of limitation. In my opinion, it is not always right to assume that when the Legislature changes the language used in the earlier Acts in a consolidating Act, the change was intended to mark a change of policy. Very often the Legislature uses language which is more in consonance with proper drafting and the change may not indicate any change of policy at all. Now, apart from the previous provisions, it, seems to me clear on a plain natural construction of the section itself that if a tenant could not recover any excess paid by him beyond six months from the date of the payment and if such amounts became irrecoverable, it is difficult to understand how a tenant could deduct what he could not recover and what was irrecoverable in law. The same view of the law has been taken in a parallel piece of legislation in England in Bayley v. Walker [1925] 1 K.B. 447. I see no reason to take a view different from that taken by the appellate Court that the interpretation put by the English Court on a similar provision of law is the correct

interpretation.

12. The result, therefore, is that the revision application must fail and the rule will be discharged with costs.

13. In Civil Revision Applications Nos. 235 to 265 of 1953 rule discharged with costs for the reasons given in the above judgment.

14. In Civil Revision Application No. 1880 of 1952, a further question of some considerable importance arises as to the practice prevalent in the Small Causes Court. It appears that when a tenant applies for fixation of standard rent, the Court used to make an order asking the tenant to deposit the rent pending the disposal of the application. This was done as such applications took some time to be disposed of and the rights of the landlords had to be safeguarded, because if such an order was not made, a tenant who was protected would not pay any rent, continue to be in possession, and when the application was disposed of, he might walk out leaving the landlord very little remedy to recover the rent. The view also was taken by the Small Causes Court that if an application for fixation of standard rent was made by the tenant, then the landlord would not be entitled to file a suit for ejectment on the ground of non-payment of rent, because it was held that the very fact that the tenant had made an application for fixation of standard rent showed that he was ready and willing to pay rent. The appellate Court has taken the view, and in my opinion rightly, that there is no jurisdiction in the Small Causes Court to make an order for deposit when a tenant applies for the fixation of standard rent. It is difficult to understand how that jurisdiction arises. The tenant only comes to the Small Causes Court for fixation of standard rent. No question of non-payment of rent arises. There is neither a suit for payment of rent, nor a suit for ejectment pending, and the Small Causes Court in such an application orders the tenant to deposit rent. It is also difficult to understand what would be the consequence if the tenant fails to deposit the rent as ordered by the Court. Mr. Kapadia says he may be guilty of contempt. I would be very reluctant to hold that a tenant who was incapable of depositing rent should lose his right to have the standard rent determined. Mr. Kapadia suggests that he may even be committed to jail. But Mr. Kapadia says that some method should be devised whereby the landlord''s rights should be protected in cases where a tenant applies for fixation of standard rent. In my opinion the Rent Act does supply an answer to this difficulty of Mr. Kapadia.

15. Let us look at the scheme of the Rent Act. Sub-section (3) of Section 11 permits the Court to fix an interim rent which the tenant is liable to pay when he applies for fixation of standard rent after he has received a notice from his landlord u/s 12(2). The scheme of Section 12 is that a landlord cannot institute a suit for recovery of possession of the demised premises on the ground of nonpayment of rent until the expiration of one month next after notice in writing of the demand of the rent has been served upon the tenant. If after this notice the tenant has still failed to pay rent, he would be liable to be ejected u/s 12(1) because in that case it could be said

that he was not ready and willing to pay rent. Now, in order to protect the tenant the Legislature has enacted Sub-section (3) of Section 11 and the scheme of that sub-section is that as soon as the tenant gets notice he can go to Court and apply for fixation of standard rent, but while the application is being heard and disposed of the Court orders him to pay an interim rent. If he does not pay this interim rent, he would be liable to be ejected u/s 12(1). Therefore the scheme of the Act seems to be fairly clear, that there is an obligation upon the tenant to pay rent at all times and he is liable to be ejected if he fails to pay rent after notice has been given to him u/s 12(2). The only right he has is, in cases where he complains that the contractual rent is not the proper rent, to get an interim, rent fixed by the Court, but the obligation to pay that interim rent continues throughout, and if that obligation is not discharged, he would be liable to be ejected u/s 12(1).

16. Now, the difficulty that Mr. Kapadia feels-and that is a difficulty undoubtedly of some substance-is that u/s 11(3), looking to the language of that sub-section, the right of the Court to fix an interim rent only arises when a notice has been given by the landlord u/s 12(2) and an application for fixing the standard rent is made by the tenant subsequent to the giving of the notice by the landlord. Therefore, it is urged that it would be difficult to apply Sub-section (3) to a case where the tenant has applied for fixing the standard rent before any notice has been given by the landlord. In my opinion, Sub-section (3) must be construed in the light of the other provisions of the Act. If a tenant applies for fixing of standard rent and stops paying rent, as Mr. Kapadia says he very often does, it is certainly open to the landlord to serve him with a notice u/s 12(2). If after the period of one month has elapsed he fails to pay rent, he would be liable to be ejected u/s 12(1). It would not be open to him to say that he is ready and willing to pay rent when he has failed to pay rent after the notice given by the landlord u/s 12(2) and after the time mentioned in that sub-section has elapsed. But he can do this. He can go to Court u/s 11(3) and ask the Court to fix an interim rent which he would pay in order to avoid the liability of being ejected u/s 12(J). Now, when he applies u/s 11(3) after notice is given to him, strictly he would have to make an application for fixing the standard rent, but inasmuch as he has already made an application for fixing the standard rent and that application is already on the file of the Small Causes Court, it would be futile for him to make a subsequent application in order to get the benefit of Sub-section (3). Therefore, in my opinion, the Court has jurisdiction to make an order for interim payment of rent where an application for fixing the standard rent is made before or after the notice u/s 12(2) is given. The right of the tenant u/s 11(3) is only this that in order that he should not be ejected for non-payment of rent, he wants to pay rent, but he does not want to pay the "contractual rent about which he has made a complaint, but he wants to pay rent which is the interim rent fixed by the Small Causes Court. That right is given to the tenant whether he makes an application for fixing the standard rent before the notice u/s 12(2) is served or after it is served. The fact which is relevant and material is the giving of the notice by the landlord u/s 12(2). As soon as

that notice is given and the time mentioned in that sub-section elapses, the tenant is liable to be ejected if he does not pay rent. If he does not get an order for interim payment u/s 11(3), he must pay the contractual rent, but in order to safeguard his own interest he can make an application u/s 11(3) and get a lesser rent fixed by the Small Causes Court. In my opinion it is absurd to suggest that merely because a tenant has made an application for fixing the standard rent, he is relieved from the obligation to pay rent, and even though the landlord gives him a notice u/s 12(2) he can continue not to pay rent and not be liable to be ejected u/s 12(1).

17. Therefore, while upholding the view taken by the appellate Court with regard to the practice prevalent in the Small Causes Court, I have construed Section 11(3) in a manner which will not make it difficult for the landlord to recover rent from his tenant in cases where the tenant has applied for fixation of standard rent.

18. As deposits were made in this case pursuant to a long standing practice of the Small Causes Court, I do not think it would be right as directed by the appellate Court that these deposits should be returned to the tenant. The proper order would be that these deposits should be adjusted in the light of the main judgment I have delivered.

19. Rule discharged with costs.

20. In Civil Revision Applications Nos. 1486 to 1468 of 1952 and No. 1629 of 1952, rule discharged with costs for the same reasons as in C.R.A. No. 1880 of 1952.